

## Correspondence

### More on Hospital Attorneys: Hershey and Holder React

Dear Editors:

If having a variety of perspectives from which to view a particular phenomenon gives one an advantage in discussing a subject, then putting some thoughts in writing about house counsels in hospitals should not make me feel uncomfortable. However, I approach the subject with trepidation because the role of hospital house counsel is a complicated one.

My commentary on the article, *In-House Hospital Law Offices: How Healthy Are They?* by Max Douglas Brown, published in the October issue, proceeds from many perspectives; I am: (1) a faculty member who conducted a training program for attorneys at the University of Pittsburgh from the late 1960s to the mid-1970s, designed in considerable measure to prepare young attorneys to enter the health law field as house counsel; (2) a faculty member guiding some law students toward careers as house counsel; (3) an attorney serving to a limited extent in an "of counsel" relationship with a law firm that has a growing hospital clientele; and (4) a recipient of occasional requests for various kinds of assistance from young attorneys seeking to enter the health law field and attorneys currently employed as house counsel who are desirous of making changes by securing employment with other institutions or law firms.

Mr. Brown makes an observation of extreme importance in stating: "Hospitals should rely, not so much on law firms per se, as on experienced specialists within law firms." An in-house hospital legal office is unable to provide the full range of legal services that the hospital may require, although house counsel can develop substantial responsibility in numerous areas. As the author suggests, there probably should be greater emphasis, over the course of time, on extending the areas in which house counsel can provide the majority of, if not almost all, legal services. The article states, at least implicitly and in some respects explicitly, that existing relationships with some law firms and the presence of law firm

representatives on hospital boards tend to limit the house counsel's areas of responsibility.

Although there is considerable concern about the relative youthfulness and inexperience of in-house legal personnel, the basic legal research and much of the work performed by the outside law firm are frequently done by legal personnel no more experienced, and often less knowledgeable in hospital and health field concerns, than the hospital's legal staff. A hospital seeking outside legal services should be certain that the services it receives are being provided mainly by expert senior attorneys at the firm. To substitute a relatively inexperienced attorney from an outside law firm for house counsel of approximately equal inexperience is a poor use of financial resources and tends to denigrate the role of hospital legal staff. The one advantage that the young attorney in the law firm has, which can be of considerable value and which can make a crucial difference in the quality of services received by the hospital, is the active supervision and direction provided by a senior attorney. From conversations with hospital house counsel, I have learned that they perceive the lack of guidance and direction of a capable senior attorney as their most serious problem. In many hospital legal offices, particularly where only one or two attorneys are present, the opportunity to discuss and review approaches to be taken — the ways in which the law can be brought to bear on a particular problem — is lacking, although some hospital house counsel have been very resourceful in utilizing outside counsel to foster their own professional development while securing the benefits of expert services.

I would like to address a matter untouched by the author — conflict in the role and duties of hospital in-house counsel. The hospital, like other corporations, has various power points. However, one power point in the hospital, the medical staff, has a special relationship to the institution, which creates a range of concerns and problems that are rarely present in other organizations served by house counsel.

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For example, when house counsel negotiates a contract between the hospital and a hospital-based physician, the house counsel must recognize that he or she will have to live with the arrangement in a way that is not the case if negotiations are conducted by outside counsel. The physician may be annoyed by the active role played by house counsel and may enjoy every opportunity in the future to make the house counsel's job more difficult. Even during negotiations, certain issues unrelated to the contract may arise, for example, issues concerning the administration of the physician's department; agreement on these issues may be difficult to reach because of the adversary nature of the negotiations between the physician and house counsel.

Similar difficulties can arise with regard to the hospital's enforcement of medical staff rules and regulations, hospital policies, etc. To the extent that hospital house counsel advises the hospital administration or medical staff leadership in this matter, the house counsel may become the object of antagonism on the part of the physicians subject to the proposed disci-

pline, as well as other medical staff members who believe, for whatever reason, that discipline in the particular circumstances is inappropriate.

Hospital house counsel can be involved in other situations where conflicts occur. Hospital administrators may not be forthcoming when providing information to medical staff and to the hospital board. This raises the larger issue of precisely who is the client that the house counsel serves. House counsel's position is particularly complicated where the chief executive sets salaries and other terms and conditions of employment of house counsel. This problem of loyalty or, perhaps better stated, loyalty to whom, is one with which house counsel in all settings must deal, but it is acute in the hospital. Also, the line between practical, "business" advice and legal advice is not a clear one when dealing with options available to the hospital in many circumstances, particularly when the chief executive has indicated the course he or she wishes to follow.

My concern for "who is the client" may well explain my view that the role of house counsel may not expand into business areas, such as employee rela-

tions, to the extent that it otherwise might in traditional corporations. In dealing with patient care issues, house counsel needs rapport with, and the confidence of, the members of the nursing department and other professional specialists within the institution, and, for that matter, almost all employees. However, in such areas as collective bargaining and contract interpretation, the hospital house counsel provides the administration with guidance which may be deemed, and probably often is, contrary to the interests of specific employees, or even all employees of the hospital. The counsel's role here may engender employees' resistance to him or her on matters completely unconnected to employee relations, and this resistance can adversely affect house counsel's resolution of patient care problems.

Nonetheless, I believe that being hospital house counsel is a very challenging and stimulating experience for young attorneys who seek responsibility within a large, multi-problem organization. The day-to-day work requires dealing with people to an extent far greater than is true in other corporations. Furthermore, an attorney

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working in a hospital may feel that he or she has an opportunity to make a positive contribution to the health of a particular community, as well as to the individuals who receive services in the institution. In other words, house counsel has a role to play in social policy on the micro level that is denied attorneys working in many other settings.

It is incumbent upon the executives of hospitals employing house counsel, as well as upon the house counsel themselves, to review the advantages and the difficulties of expanded work for in-house hospital legal offices. Particular attention should be given to the conflict of interest situations in which many house counsel find themselves from time to time. To some extent, effective use of outside counsel may mitigate this difficulty, although it may also impose some limits on the expansion of legal services provided by the in-house attorneys. Outside legal counsel may be used as buffers on certain issues to avoid causing the hospital house counsel to lose credibility with some within the hospital, including medical staff members, whose continued good will is necessary for maxi-

imum effectiveness.

In looking back at the matters about which I have counseled hospitals, some were of the type for which house counsel could have provided satisfactory service, usually more expeditiously and almost always at much reduced expense to the hospital. Other matters would have put house counsel in an unenviable position, and possibly destroyed his or her effectiveness to serve the institution, regardless of the individual's legal knowledge and sensitivity to the issues.

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Dear Editors:

I very much enjoyed Max Douglas Brown's article on in-house hospital law offices, but I do wish to point out that other medical centers employ in-house attorneys to do very different sorts of things, and for different reasons, than those stated in his article. My only concern about this very inter-

esting survey is that it may give readers the impression that this is the only model that exists in major medical centers.

In contrast to the legal offices described in Mr. Brown's article, our office, which is funded jointly by Yale University School of Medicine and Yale-New Haven Hospital, has two lawyers. Both of us have LL.M. degrees; I had been in practice for years before I went to Yale Law School for my master's degree and before I began my present job. We both have faculty appointments and teach semester-long courses to medical students, which house officers also are invited to attend. Our courses are also attended by Yale law students. For example, I teach courses on Medical Malpractice Law, Legal Issues in Pediatrics and Adolescent Medicine, and Legal Issues in Clinical Research, and I am an Associate Professor, with my appointment in the Department of Pediatrics, my primary academic interest. The other lawyer's faculty appointment is in the Department of Internal Medicine. We also do a great deal of teaching on a short-term basis to house officers, with our instruction designed to cover the